

CALIFORNIA COASTAL COMMISSION

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F14a

Filed: 7/18/03
180th day: 1/14/04
Staff: SM-SC
Staff report prepared: 10/15/03
Hearing date: 11/7/03
Hearing item number: F14a

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number**3-03-029, Kwiatowski Residential Demolition and Rebuild**

Applicant.....Ed Kwiatowski

Project location1805 Sunset Drive, Pacific Grove, Monterey (APN 07-072-12).

Project description.....Replace existing 1,776 square foot residence and 861 square foot garage with new residence having 5,257 square feet of floor area and 3793 square feet of structural coverage, involving approximately 500 cubic yards of grading.

Local approval.....City of Pacific Grove Use Permit No. 2670-00, Variance No. 01-1613, and Tree Removal Permit No. CDD 3484

File documents.....Coastal Development Permit Application File 3-03-029; City of Pacific Grove Certified Land Use Plan.

Staff recommendation ...**Approval with Conditions**

Summary: The Applicant proposes to replace existing residential development at 1805 Sunset Drive, in the Asilomar Dunes residential neighborhood of the City of Pacific Grove, with a new larger residence. The property is bounded by the Asilomar State Conference Center to the south, and Sunset Drive and Asilomar State Beach to the west, and located within the Asilomar dunes complex, which is protected by the Pacific Grove certified Land Use Plan (LUP) as an environmentally sensitive habitat area (ESHA). Because the City of Pacific Grove does not have a certified Implementation Plan, the Chapter 3 policies of the Coastal Act are the standard of review, with the LUP providing guidance.

Coastal Act Section 30240 protects ESHA from significant disruption or degradation, limits development in ESHA to uses dependent upon the resources, and requires development adjacent to ESHA and recreation areas to be compatible with their continuance. One of the ways the certified LUP applies this standard to the sensitive habitats of the Asilomar dunes is by limiting total maximum aggregate lot coverage to be limited to no more than 15% of the lot area.¹ The LUP allows an additional 5% of the lot to be used for outdoor living purposes, provided that is to be left in a natural condition, or landscaped so as to avoid impervious surfaces.

¹ As defined in the LUP, calculation of the maximum aggregate lot coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat. The LUP exempts the portion of the driveway from the street to the required 75-foot front setback from these coverage limitations.



California Coastal Commission
November 2003 Meeting in Los Angeles

Staff: SM Approved by:

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The proposed project is inconsistent with these requirements because it unnecessarily involves new non-resource dependent development within ESHA, and exceeds the coverage limits established by the LUP. Notwithstanding the non-conformity of the existing site coverage (due to the presence of two gravel driveways and over 2,000 square feet of outdoor living area), the replacement of the existing development must comply with current development standards. LUP coverage limits provide important guidance for carrying out Coastal Act Section 30240, as they have provided a standardized method to ensure new development, including significant redevelopment, will not disrupt or degrade the sensitive dune habitats of the Asilomar area.

Therefore, to ensure the protection and continuance of habitat and recreation areas consistent with Coastal Act Section 30240(b), the recommended conditions of approval require final plans that reduce the maximum aggregate site coverage (including all portions of the driveway behind the 75 foot setback) to no more than 15 % of the lot (3,932 square feet). In addition, the recommended conditions require the replacement structure be sited entirely within the area of existing development, in order to prevent non-resource dependent development in ESHA, as required by Coastal Act Section 30240(a). Other recommended conditions of approval carry out Coastal Act and LUP ESHA protection policies by requiring the permanent preservation of the dune habitats outside of the permitted development envelope, and by regulating construction procedures in a manner that will avoid and minimize the disturbance of the surrounding habitat areas and sensitive biological resources.

The proposed project is also inconsistent with Coastal Act policies protecting scenic resources. Coastal Act Section 30251 requires the scenic and visual qualities of coastal areas to be protected as a resource of public importance, among other ways, by protecting views to and along the ocean and scenic coastal areas, requiring visual compatibility, minimizing landform alterations, and restoring degraded areas. The project, as proposed, is inconsistent with these requirements because the larger structure will block the public views of the ocean, most notably from an overlook that is part of the Asilomar Conference Center trail system (please see the photographic visual analysis submitted by the applicant and attached as Exhibit 3). In addition, the inconsistencies with LUP coverage limitations discussed above will result in a more massive structure that is not compatible with surrounding development.

Recommended conditions requiring compliance with LUP coverage limitations and prohibit new development outside of the existing developed area, will minimize the impact of the replacement structure on existing views of the coast. Combined with a restriction limiting the maximum height of the replacement structure to no more than 16 feet above existing grade (the maximum height of the existing structure), the recommended conditions avoid adverse impacts on visual resources by limiting the new development to areas that will minimize the obstruction of existing ocean views. Visual resources are also protected by a recommended condition requiring utility connections to be placed underground.

The recommended special conditions of approval also seek to protect coastal water quality consistent with Coastal Act Policy 30231 by requiring the development to provide appropriate drainage controls during and after construction. Finally, the conditions implement Coastal Act Policy 30244 protecting



archaeological and paleontological resources by requiring the implementation of specific monitoring and mitigation measures. Only with these conditions will the development be consistent with the Chapter 3 policies of the Coastal Act

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I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-03-029 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.



4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Incorporation of City's Mitigation Requirements.** The Mitigations and Mitigation Monitoring Program adopted by the City of Pacific Grove for its final Mitigated Negative Declaration for this project are attached as Exhibit 4 to this permit; these mitigations are hereby incorporated as conditions of this permit.

Any revision or amendment of these adopted conditions and mitigation measures or the project plans as approved pursuant to the City's architectural review procedures shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.

2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final plans, for the Executive Director's review and approval, which modify and supplement the plans submitted with the application (prepared by Case Associates, dated 2/24/03) as follows:

- (a) **Lot Coverage.** The plans shall include a final site plan that locates all aspects of the development within a building envelope that does not to exceed 20% of the 26,215 square foot lot (i.e., 4,224 square feet), and is located entirely within the existing developed areas of the site shown by Exhibit 5. The plan shall demonstrate that the coverage of the residence, all portions of the driveway behind the 75 foot setback, and all impervious surfaces do not exceed 15% of the lot (i.e., 3,932 square feet). An additional 5% of the lot (1,311 square feet) may be designated for outdoor living and included in the building envelope, provided that such areas shall be left in a natural condition or landscaped to avoid impervious surfaces (i.e., surfaces that do not allow water or light to penetrate into the soil).
- (b) **Height.** Final plans shall show a reduction in the height of the proposed structure, in all areas necessary to prevent any portion of the new structure, other than a single fireplace chimney, from extending more than 16 feet above exiting grade. Elevation views shall show the height of the replacement structure in relationship to the height of the existing structure, and shall demonstrate that no portion of the replacement structure (other than the chimney) will extend above the highest point of the exiting structure.



- (c) **Grading.** Final plans shall include a revised grading plan that limits all grading activities to the building envelope identified pursuant to subsection (a), above, with one exception: sand to be excavated to accommodate the development may be placed outside of the building envelope in a manner that replicates surrounding natural dune forms, provided that it is free of impurities or previously imported soil or fill material. The grading plan shall be accompanied by a determination by a qualified biologist or landscape professional that the any changes to existing site contours, outside of the building envelope, will support and enhance the restoration of natural habitat values. In no case shall the placement of sand block views of the ocean available from the Asilomar Conference Center grounds.
- (d) **Drainage and Erosion Control.** Final plans shall include a drainage and erosion control plan that incorporates the following provisions:

Implementation of Best Management Practices During Construction. The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook, and shall be located entirely within the building envelope specified in accordance with subsection (a) above to the maximum degree feasible. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; and the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

- b) **Post Construction Drainage.** All runoff from the roof, driveway, decks, and other impervious surfaces shall be retained onsite to the greatest degree feasible. Runoff shall be captured and directed into designated pervious areas, percolation pits or appropriate storm drain systems. Drainage shall not be directed onto Sunset Drive or Asilomar Conference Center grounds. The drainage plan shall demonstrate that the pervious areas, percolation pits, or drainage systems are sized and designed appropriately to



accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85% storm) excess runoff shall be conveyed off-site in a non-erosive manner.

3. Dune Habitat Restoration Landscaping Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of dune habitat restoration plans for the entire lot outside of the building envelope designated pursuant to Special Condition 2. The restoration plan shall be prepared using California native plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. At a minimum, the plan shall demonstrate that:

- (a) All vegetation planted on the site will consist of dune plants native to the Asilomar area,
- (b) All required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and
- (c) Final contours of the site, after project grading, will support restoration efforts.

The plans shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system (if any), topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants within the first growing season after completion of construction.

Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved restoration plans and describing long-term maintenance requirements for the restoration. At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently, to identify and correct any restoration and maintenance issues.

Five years from the date of completion of the addition, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified specialist, that certifies the on-site restoration is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.



If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Dune Habitat Restoration Mitigation Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved landscape plan, shall be carried out in coordination with the Executive Director until the approved landscaping is established to the Executive Director's satisfaction.

4. Deed Restriction. No development, as defined in Section 30106 of the Coastal Act, including improved pathways and garden accessories (i.e. pools, fountains, benches) shall occur in the protected area (defined as all of the site that is outside of the building envelope described in Special Condition #2a, and as described in an exhibit to the Notice of Intent to Issue Permit (hereinafter referred to as "NOI") to be issued by the Executive Director) except for:

1. Necessary utility lines to serve the residence.
2. Maintenance and restoration activities in accordance with the Dune Habitat Restoration Mitigation Plan approved pursuant to Special Condition #3.
3. Fencing approved pursuant to Special Condition #5.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director a legal description, which shall include both a metes and bounds and graphic depiction, for attachment as an exhibit to the NOI to be issued by the Executive Director, of the area of the subject property that is subject to the development prohibition set forth above.

5. Fencing. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall satisfy the following requirements:

- A. Plans for temporary exclusionary fences to protect sensitive areas from disturbance during construction. Vehicle parking, storage or disposal of materials shall not be allowed within the exclusionary fences. Fences shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed.

The exact placement of the temporary exclusionary fencing shall be identified on site by the project biologist/environmental monitor required by Special Condition 7, below. Evidence that the monitor has inspected and approved the construction fence shall be submitted to the Executive Director PRIOR TO COMMENCEMENT OF CONSTRUCTION. Fences shall be 4 feet high and secured by metal T-posts, spaced no more than 8 feet apart. Either mesh field fence or snowdrift fence, or comparable barrier shall be used.



B. Plans for any permanent landscaping fence, should they be necessary to discourage trampling of the area to be restored outside of the building envelope, shall require the Executive Director's review and approval, and may require an amendment to this permit. Fencing design submittal shall include evidence of review and approval by the City of Pacific Grove. No permanent fencing, other than the fencing approved by the Executive Director pursuant to this condition, may be installed on the site without an amendment to this permit.

- 6. Archaeological Mitigation.** A qualified archaeological monitor and Native American representative approved by the Executive Director PRIOR TO THE COMMENCEMENT OF CONSTRUCTION shall be present during any demolition, construction or pre-construction activities that involve ground disturbance, such as removal of existing foundations or utilities. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.
- 7. Environmental Monitoring During Construction.** Permittee shall employ a project biologist/environmental monitor approved by the Executive Director and the City of Pacific Grove Community Development Director to ensure compliance with all permit conditions and mitigation requirements during the construction phase. Evidence of compliance shall be submitted by the project monitor to the Executive Director each month while construction is proceeding, and upon completion of construction.
- 8. Utility Connections.** All utility connections shall be placed underground, and shall be contained within the building envelope established pursuant to Special Condition 2(a) to the maximum extent feasible. When installing any new utility connections, care shall be taken to avoid and minimize disturbance outside of the building envelope, among other ways, by employing the best management practices specified pursuant to Special Condition 2(d).



III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The project is located at 1805 Sunset Drive, within the Asilomar Dunes neighborhood of the City of Pacific Grove. The property is bordered by the Asilomar Conference Grounds to the south, Sunset Drive and Asilomar State Beach to the West, and residential properties to the north and east. Please see Exhibit 1 for a map of the project location. The parcel is located in an area zoned R-1-B-4, Single Family Residential, with a minimum parcel size of 20,000 square feet. Development within the surrounding neighborhood is characterized by one and two-story single-family dwellings. The subject 26,215 square foot lot currently supports a 1,776 square foot house with a detached 861 square foot garage, two gravel driveways of 766 and 1923 square feet, and outdoor impervious surfaces totaling 446 square feet. Thus, existing site coverage is 5,772 square feet, or 22% of the lot.² In addition, a landscaped fenced rear yard of 2,034 square feet current commits 7.8% of the lot to outdoor living.

The site is within the Asilomar sand dune complex, which is considered an environmentally sensitive habitat area by the City's Land Use Plan (LUP), certified in 1991. This is due in part to the existence of plant and animal species of special concern that have evolved and adapted to the harsh conditions found in the Asilomar Dunes system. Increasing development pressure has reduced the amount of available habitat, and thus the range of these species. The project site is also visually significant, as it can be seen from Sunset Drive, as well as from dune boardwalks and an overlook within the Asilomar Conference Grounds. Both Sunset Drive and the conference center attract large number of visitors, and provide important coastal access and recreation opportunities to the public. Finally, the site is within an archaeological sensitive area; the LUP recognizes that there is a likelihood of prehistoric cultural resources throughout the Pacific Grove Coastal Zone.

2. Project Description

The proposed development will replace the existing one-story 1,776 square foot residence and 861 square foot garage with a larger split-level residence having a structural coverage of 3,793 square feet and gross floor area of 5,257 square feet (including a below grade garage and storage area). (Project plans attached as Exhibit 2). Grading to accommodate the residence requires the excavation of approximately 500 cubic yards of sand, which will be placed between the new structure and Sunset

² Accounting for the LUP's exception for the first 75 feet of driveway, up to 12 feet in width, the current coverage equates to 4,872 square feet, or 18.6% of the lot.



Drive in a manner intended to reflect a natural dune landform. Two existing gravel driveways totaling 2,689 square feet will be replaced with a new decomposed granite driveway totaling 1,647 square feet, 897 square feet of which is driveway behind the 75 foot front setback line. Including outdoor impervious surfaces totaling 324 square feet, aggregate site coverage will be 5,014 square feet or 19% of the lot. The project also includes a 602 square foot fenced and landscaped back yard, as well as 125 square feet of pervious front walkway, which dedicates an additional 2.8% of the lot for outdoor living purposes. Thus, the application proposes to commit 22% of the site to residential use.

B. Standard of Review

The Asilomar Dunes portion of the City of Pacific Grove is within the coastal zone, but the City does not have a certified LCP. The City's Land Use Plan (LUP) was certified in 1991, but the zoning, or Implementation Plan (IP) portion of the LCP has not yet been certified. The City is currently working to complete the IP. Because the City does not yet have a certified LCP, the Coastal Commission must issue coastal development permits, with the standard of review being the Coastal Act, although the certified LUP may serve as an advisory document.

C. Issue Analysis

1. Environmentally Sensitive Habitat Areas

a. Applicable Environmentally Sensitive Habitat Area (ESHA) Policies

Coastal Act Section 30240, states:

30240(a)...*Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

The Coastal Act, in Section 30107.5, defines an environmentally sensitive area as

30107.5...*any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

While Coastal Act policies are the standard of review for coastal development permits until the City completes its LCP, the City's LUP also provides guidance to the Commission as it considers proposals for development in the Asilomar Dune neighborhood. With regards to environmentally sensitive habitat areas, the LUP contains the following relevant policies:

LUP Policy 2.3.5.1. *New development in the Asilomar dunes area (bounded by Asilomar Avenue, Lighthouse Avenue, and the boundary of Asilomar State Park) shall be sited to protect existing and restorable native dune plant habitats... No development on a parcel containing*



esha shall be approved unless the City is able to find that, as a result of the various protective measures applied, no significant disruption of such habitat will occur.

LUP Policy 2.3.5.1.d. *The alteration of natural land forms and dune destabilization by development shall be minimized. Detailed grading plans shall be submitted to the City before approval of coastal development permits.*

LUP Policy 2.3.5.1.e *If an approved development will disturb dune habitat supporting or potentially supporting Menzies' wallflower, Tidestrom's lupine or other rare or endangered species, or the forest front zone along Asilomar Avenue south of Pico Avenue, that portion of the property beyond the approved building site and outdoor living space (as provided in section 3.4.5.2) shall be protected by a written agreement, deed restrictions or conservation easement granted to an appropriate public agency or conservation foundation. These shall include provisions which guarantee maintenance of remaining dune habitat in a natural state, provide for restoration of native dune plants under an approved landscape plan, provide for long-term monitoring of rare and endangered plants and maintenance of supporting dune or forest habitat, and restrict fencing to that which would not impact public views or free passage of native wildlife. Easements, agreements or deed restrictions shall be approved prior to commencement of construction and recorded prior to sale or occupancy.*

LUP Policy 2.3.5.1.g. *Require installation of utilities in a single corridor if possible, and should avoid surface disturbance of areas under conservation easement.*

LUP Policy 3.4.4.1. *All new development shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of sand dunes and the habitat of rare and endangered plants.*

Section 3.4.5.2 of the LUP specifies the maximum aggregate lot coverage allowed for new development in the Asilomar Dunes area as follows:

LUP Policy 3.4.5.2. *Maximum aggregate lot coverage for new development in the R-1-B-4 zoning districts is 15% of the total lot area. For purposes of calculating lot coverage under this policy, residential buildings, driveways, patios, decks (except decks designed not to interfere with passage of water and light to dune surface below) and any other features that eliminate potential native plant habitat will be counted. However, a driveway area up to 12 feet in width the length of the front setback shall not be considered as coverage if surfaced by a material approved by the Site Plan Review Committee. An additional 5% may be used for immediate outdoor living space, if left in a natural condition, or landscaped so as to avoid impervious surfaces, and need not be included in the conservation easement required by Section 2.3.5.1(e). Buried features, such as septic systems and utility connections that are consistent with the restoration and maintenance of native plant habitats, need not be counted as coverage.*

b. ESHA Analysis



1. Description of Environmentally Sensitive Habitat

The proposed development is located in the Asilomar Dunes area, an environmentally sensitive habitat area located at the seaward extremity of the Monterey Peninsula. The Asilomar Dunes area is a sand dune complex located west of Asilomar Avenue between Lighthouse Avenue in Pacific Grove and Cypress Point in the Del Monte Forest Area of Monterey County. It extends inland from the shoreline dunes and bluffs through a series of dune ridges and interdune swales to the edge of Monterey pine forest. The unusually pure, white quartz sand in this area was formerly stabilized by a unique indigenous dune flora. However, only a few acres of the original approximately 480-acre habitat area within the City of Pacific Grove remain in a natural state. The balance of the original habitat has been lost or severely damaged by sand mining, residential development, golf course development, trampling by pedestrians, and the encroachment of non-indigenous introduced vegetation.

While a number of preservation and restoration efforts have been undertaken, most notably at the Spanish Bay Resort, Asilomar State Beach, and in connection with previously approved residential developments on private lots, certain plants and animals, characteristic of this environmentally sensitive habitat, have become rare or endangered. The Asilomar Dune ecosystem includes up to ten plant species and one animal species of special concern that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of the Asilomar Dunes area.

The best known of these native dune plants are the Menzie's wallflower, Monterey spineflower and the Tidestrom's lupine, all of which have been reduced to very low population levels through habitat loss and are Federally-listed endangered species. Additionally, the native dune vegetation in the Asilomar Dunes area also includes more common species that play a special role in the ecosystem, for example: the bush lupine which provides shelter for the rare black legless lizard, and the coast buckwheat, which hosts the endangered Smith's blue butterfly. Because of these unique biological and geological characteristics of the Asilomar Dunes, all properties in the Asilomar Dunes area are located within environmentally sensitive habitat areas.

A Dune Habitat restoration Plan and Botanical Survey was prepared by Joey Dorrell-Canepa on June 26, 2000. The survey did not find any threatened or endangered species in the immediate project area. However, the report identified the existence of Tidestrom's lupine in an area covering approximately 900 square feet on the eastern portion of the parcel, approximately 100 feet from the existing house, as shown in the project plans attached as Exhibit 2. While there may not be any endangered plants in the building site presently, the nature of the dune habitat is such that they appear at different locations and times. Thus, the whole area outside of the existing development is considered habitat as it all has the potential to sustain the endangered plants.

The Pacific Grove Land Use Plan describes all dune habitats in this area as being comprised of potential habitat for rare and endangered plants and animals such as Menzie's wallflower and the black legless lizard. The LUP goes on to state that natural dunes which are "presently barren or covered with non-native plants, but are potentially restorable to native plant cover" shall be considered environmentally sensitive. Similarly, as the Commission has often observed, developed areas of dune systems like



Asilomar, such as driveways and residences, frequently revert back to dune habitat (self-restore) over time when the development is removed.

Therefore, based upon the surveys and biological report prepared for the property, staff observations, and consistent with the City's LUP and prior Commission actions on other proposed development in the dunes, the Commission finds that the site is environmentally sensitive habitat as defined by Section 30107.5 of the Coastal Act.

2. ESHA Impact Analysis

Coastal Act Section 30240 protects ESHA from significant disruption or degradation, limits development in ESHA to uses dependent upon the resources, and requires development adjacent to ESHA and recreation areas to be compatible with their continuance. To protect the unique and sensitive habitats of the Asilomar dunes, the LUP calls for total maximum aggregate lot coverage to be limited to no more than 15 percent of the lot area.³ The LUP allows an additional 5% of the lot to be used for outdoor living purposes, provided that is to be left in a natural condition, or landscaped so as to avoid impervious surfaces.

The proposed project is inconsistent with these requirements because it unnecessarily involves new non-resource dependent development within ESHA. The new development will extend outside of the existing developed areas of the site, in areas to the south and east of the existing driveway and garage, to the west and north of the existing residence. The replacement residence will also cover areas of the landscaped back yard, which, although degraded, retains the essential soil and climatic conditions that support the unique and rare biological resources of the Asilomar dunes, and therefore constitutes ESHA. The proposed placement of new residential development in portions of the dunes that are not currently covered by development conflicts with Coastal Act Section 30240(a), which prohibits non-resource dependent development in ESHA. Given the extent of the site that has already been developed (5,772 square feet), it is clearly feasible to contain the new development outside of ESHA.

The proposed replacement residence is also inconsistent with the 15% maximum aggregate lot coverage established by the LUP. The new residence has a footprint of 3,793 square feet, and 1,221 square feet of additional site coverage (impervious porches and the portion of the driveway behind the 75-foot front setback line) resulting in an aggregate coverage of 5,014 square feet that will consume 19% of the lot.

LUP coverage limits provide important guidance for carrying out Coastal Act Section 30240. The City and the Commission have consistently applied these limits to ensure that new development within does not disrupt or degrade sensitive dune habitats. Notwithstanding the presence of non-conforming development on the site⁴, the extent of demolition and modification of the existing development

³ As defined in the LUP, calculation of the maximum aggregate lot coverage includes buildings, driveways, patios, decks that do not allow for the passage of water and light to the dune surface, and any other features that eliminate native plant habitat. The LUP exempts the portion of the driveway from the street to the required 75-foot front setback from these coverage limitations.

⁴ The combined footprint of existing residence and garage is 2,637 square feet, or 10.1% of the lot. Nevertheless, the existing development exceeds the LUP's 15% coverage limit due to the presence of gravel driveways and impervious surfaces that bring total



provides the appropriate opportunity to ensure that the replacement structure will conform to established development standards. Indeed, it is typical for zoning ordinances to require compliance with all applicable development standards when non-conforming structures are proposed for replacement or significant alteration, as is the case here. Such an approach is necessary to ensure that LUP policies protecting the rare biological resources of the Asilomar dunes are consistently implemented for both new development and significant redevelopment.

Therefore, to ensure the protection and continuance of habitat and recreation areas consistent with Coastal Act Section 30240(b), conditions have been attached to this permit that require final plans to reduce the maximum aggregate site coverage (including all portions of the driveway behind the 75 foot setback) to no more than 15 % of the lot (3,932 square feet). In addition, to prevent non-resource dependent development in ESHA consistent with Coastal Act Section 30240(a), the conditions require the replacement structure be sited entirely within the area of existing development. Additional conditions of carry out Coastal Act and LUP ESHA protection policies by requiring the permanent preservation of the dune habitats outside of the permitted development envelope, and by regulating construction procedures in a manner that will avoid and minimize the disturbance of the surrounding habitat areas and sensitive biological resources.

c. ESHA Conclusion

The proposed project is inconsistent with Coastal Act Section 30240 because it involves new non-resource dependent development within ESHA, and exceeds the coverage limits established by the certified LUP as necessary to protect the environmentally sensitive Asilomar dunes. Therefore, the project has been conditioned to avoid disturbance of the environmentally sensitive habitat areas outside of the existing developed area of the site, and to limit site coverage consistent with the standards of the certified LUP.

In addition, to ensure that the habitat values of the site will be protected into the future, the conditions require the development and implementation of a Dune Habitat Restoration Plan covering all portions of the site outside of the approved development envelope, and the recordation of a deed restriction providing permanent protection of this area. The deed restriction allows only those uses necessary for, and consistent with, maintenance of the restricted area as a nature reserve under private stewardship. The deed restriction also provides notice to future property owners regarding the constraints and obligations associated with this site. This is consistent with previous Coastal Commission approvals in the Asilomar area, LUP policies and conditions of the City's approval and is necessary to ensure the long-term protection of this habitat consistent with Coastal Act Section 30240.

Finally, the project has been conditioned to avoid impacts to ESHA during construction by requiring temporary exclusionary fences that will protect sensitive native dune plant habitat areas outside of the

site coverage to 22%, or 18% when subtracting the first 75 feet of one of the driveways as allowed by the LUP. The existing residence also exceeds LUP limits for outdoor living area, as the landscaped rear yard of 2,034 square feet consumes 2,034 square feet, or 7.8% of the lot.



building envelope during construction. Experience has shown that exclusionary fencing helps to assure that workpeople and materials stay outside sensitive natural habitat areas, such as those surrounded by the existing residence. The conditions require that equal precaution be taken during the installation of utilities to ensure that adjacent dune habitats are not disturbed. Only with these conditions can the development be found consistent with Section 30240 of the Coastal Act.

2. Visual Resources

a. Applicable Visual Resources Policies

Section 30251 of the Coastal Act requires that new development in highly scenic areas "such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation. . ." shall be subordinate to the character of its setting; the Asilomar area is one of those designated in the plan. The Coastal Act further provides that permitted development shall be sited and designed to protect views in such scenic coastal areas; and, in Section 30240(b), requires that development adjacent to parks and recreation areas shall be sited and designed to avoid degradation of those areas.

The City's certified Land Use Plan contains the following relevant policies:

LUP Policy 2.5.2. ...Coastal area scenic and visual qualities are to be protected as resources of public importance. Development is required to be sited to protect views, to minimize natural landform alteration, and to be visually compatible with the character of surrounding areas.

LUP Policy 2.5.4.1. It is the policy of the City of Pacific Grove to consider and protect the visual quality of scenic areas as a resource of public importance. The portion of Pacific Grove's coastal zone designated scenic includes: all areas seaward of Ocean View Boulevard and Sunset Drive, Lighthouse Reservation Lands, Asilomar Conference Ground dune lands visible from Sunset Drive, lands fronting on the east side of Sunset Drive; and the forest front zone between Asilomar Avenue and the crest of the high dune (from the north side of the Pico Avenue intersection to Sinex Avenue)

LUP Policy 2.5.5.1. New development, to the maximum extent feasible, shall not interfere with public views of the ocean and bay.

LUP Policy 2.5.5.5. Landscape approval shall be required for any project affecting landforms and landscaping. A landscaping plan, which indicates locations and types of proposed plantings, shall be approved by the Architectural Review Board.

LUP Policy 2.5.5.6. ...Utilities serving new single-family construction in scenic areas shall be placed underground.

LUP Policy 3.4.4.1. All new development in the Asilomar Dunes area shall be controlled as necessary to ensure protection of coastal scenic values and maximum possible preservation of



sand dunes and the habitat of rare and endangered plants.

b. Visual Resources Analysis

Coastal Act Section 30251 requires the scenic and visual qualities of coastal areas to be protected as a resource of public importance, among other ways, by protecting views to and along the ocean and scenic coastal areas, requiring visual compatibility, minimizing landform alterations, and restoring degraded areas. In implementing this policy, the LUP identifies the Asilomar dunes as a highly scenic area of importance, and establishes the development standards cited above to protect these visual resources.

The project site is within the scenic area designated by the LUP, and visible to the many residents and visitors that come to the area to enjoy Sunset Drive, Asilomar State Beach, and the Asilomar Conference Center. Thus, new development on the site must be carefully designed and sited to prevent impacts to these significant coastal views. The proposed development does not comply with this requirement because the proposed replacement structure will block the public views of the ocean, most notably from an overlook that is part of the Asilomar Conference Center trail system (please see the photographic visual analysis submitted by the applicant and attached as Exhibit 3). In addition, the inconsistencies with LUP coverage limitations discussed in the ESHA findings, result in a more massive structure than is typically allowed in this area. The proposed project is therefore inconsistent with Coastal Act and LUP standards that require new development to be compatible with surrounding development, protect the scenic value of the natural dune environment, and avoid interference with views of the bay.

The conditions of this permit that require compliance with LUP coverage limitations and prohibit new development outside of the existing developed area will minimize the impact of the replacement structure on existing views of the coast. The conditions further require that the maximum height of the proposed replacement structure be reduced to no more than 16 feet above existing grade (the maximum height of the existing structure), in order to avoid interference with existing ocean views. Visual resources are also protected by a recommended condition requiring utility connections to be placed underground.

c. Visual Resources Conclusion

The proposed development is inconsistent with Coastal Act Section 30251 because it will block ocean views available from the Asilomar Conference Center Grounds. It is further inconsistent with Section 30251 and LUP Policies protecting scenic resources due to its non-compliance with coverage limitations, which results in a structure that is not compatible with surrounding development, unnecessarily alters natural land forms, and fails to protect existing ocean views. The special conditions of approval therefore prohibit new development outside of the existing developed area, require compliance with LUP site coverage requirements, and prohibit and increase in height above the existing structure. The special conditions further protect scenic resources by requiring the restoration and permanent protection of the dune habitats outside of the permitted building envelope, and by requiring utilities to be placed underground. Only as so conditioned can the development be found to be consistent with Coastal Act Section 30251.



2. Water Quality/Marine Resources

a. Applicable Water Quality Policies

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

LUP Policy 2.2.5.2 states:

To reduce the potential for degradation of the ASBS/Marine Gardens, the City shall require, where necessary, drainage plans and erosion, sediment and pollution control measures as conditions of approval of every application for new development.

b. Water Quality Analysis and Conclusion

As recognized by the LUP, the rich and diverse marine habitat along the Pacific Grove Shoreline is an Area of Special Biological Significance (ASBS) designated by the State Water Resource Control Board. The project site is directly across the street these marine habitats. Drainage and stormwater runoff from the site, both during and after construction, has the potential to degrade coastal water quality and diminish biological productivity by contributing sediments and pollutants

Therefore, to carry out Coastal Act and LUP standards above, approval of the development has been conditioned to require grading and drainage plans that minimize site disturbance, prevent erosion, contain sediments and pollutants, and retain stormwater runoff on site to the maximum degree feasible. Only with this conditions is the project consistent with Coastal Act Section 30231.

3. Archaeological Resources

a. Applicable Archaeological Resources Policies

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Land Use Plan Section 2.4 also provides guidance on this topic as follows:



LUP Policy 2.4.5.1. *Prior to the issuance of any permit for development or the commencement of any project within the areas designated on Figure 3, the Archaeological Sensitivity Map, the City in cooperation with the State Historic Preservation Office and the Archaeological Regional Research Center, shall:*

- (a) Inspect the surface of the site and evaluate site records to determine the extent of the known resources.*
- (b) Require that all sites with potential resources likely to be disturbed by the proposed project be analyzed by a qualified archaeologist with local expertise.*
- (c) Require that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist be submitted for review and, if approved, implemented as part of the project.*

b. Archaeological Resources Analysis and Conclusion

The subject site is located within an archaeologically sensitive area designated by the LUP. Accordingly, an archaeological survey was conducted for the subject parcel, and a report prepared by Mary Doane and Trudy Haversat for Archaeological Consulting (February 11, 1999). The report concludes that the parcel contains evidence of potentially significant cultural resources.

Therefore the conditions of permit approval require a qualified archaeological monitor and Native American representative approved by the Executive Director to be present during any demolition, construction or pre-construction activities that involve ground disturbance. If archaeological resources be discovered at the project site during any phase of construction, work must cease until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is approved by the State Historical and the Executive Director of the Commission. The plan must provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and be fully implemented. Only as so conditioned is the project consistent with Coastal Act Section 30244.

D. Local Coastal Programs

The Commission can take no action that would prejudice the options available to the City in preparing a Local Coastal Program that conforms to the provisions of Chapter 3 of the Coastal Act (Section 30604 of the Coastal Act). Because the Asilomar Dunes neighborhood contains unique features of scientific, educational, recreational and scenic value, the City's Local Coastal Program will need to assure long-range protection of these resources.

While the northern Asilomar Dunes area was originally included in the work program for the Del Monte Forest Area LUP (approved with suggested modifications, September 15, 1983), the area was annexed by the City of Pacific Grove in October, 1980, and therefore is subject to the City's LCP process.



Exercising its option under Section 30500(a) of the Coastal Act, the City in 1979 requested the Coastal Commission to prepare its Local Coastal Program. However, the draft LCP was rejected by the City in 1981, and the City began its own coastal planning effort. The City's LUP was certified on January 10, 1991, and the City is currently formulating implementing ordinances. In the interim, the City has adopted an ordinance that requires that new projects conform to LUP policies. (Of course, the standard of review for coastal development permits, pending LCP completion, is conformance with the policies of the Coastal Act.)

The LUP contains various policies that are relevant to the Coastal Act issues raised by this permit application, particularly with respect to protection of environmentally sensitive habitat, scenic resources, water quality and archaeological resources, as addressed in the findings above. The conditions of approval described by these findings are necessary to bring the development into conformance with Coastal Act policies, and are thereby also necessary to prevent approval of the project from prejudicing the ability of the City of Pacific Grove to complete an LCP consistent with Chapter 3 of the Coastal Act. Thus, only as conditioned will approval of the development avoid prejudicing the City of Pacific Grove's ability to prepare and implement a complete Local Coastal Program that is consistent with the Coastal Act.

E. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Pacific Grove approved a Mitigated Negative Declaration for the project that established environmental mitigations that have been incorporated into the terms of this permit by Special Condition 1.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has identified additional mitigations to those required by the City, necessary to address avoid significant adverse impacts to environmental resources such as sensitive habitats, scenic quality, coastal waters, and archaeological materials. Accordingly, the project is being approved subject to conditions that incorporate and expand upon the mitigation measures required by the City. As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

